

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
EMBARQ CORPORATION)
For Authorization of an Indirect)
Transfer of Control of Embarq)
Communications, Inc. to CenturyTel,)
Inc. and Withdrawal of Payphone)
Certification.)
_____)

DOCKET NO. 2008-0317

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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PUBLIC UTILITIES
COMMISSION

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In the Matter of the Application of)	
EMBARQ CORPORATION) Docket No. 2008-0317
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Transfer of Control of Embarq)
Communications, Inc. to CenturyTel,)
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Certification.)
_____)

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to EMBARQ CORPORATION's ("Applicant") request to approve the indirect transfer of control of Embarq Communications, Inc. ("ECI"),¹ Applicant's Hawaii operating subsidiary, to CenturyTel, Inc. ("CenturyTel") ("Proposed Transaction"). The commission

¹ECI, formally known as Sprint Long Distance, Inc., was granted authority to provide resold intrastate telecommunications services in the State of Hawaii ("State"). See In re Sprint Long Distance, Inc. Docket No. 2006-0022, Decision and Order No. 22439, filed on May 1, 2006. Subsequently, the commission approved the transfer of control of Sprint Long Distance, Inc. to Applicant. See In re Sprint Long Distance, Inc. Docket No. 2006-0060, Decision and Order No. 22462, filed on May 11, 2006.

also approves the voluntary surrender of Embarras Payphone Services, Inc.'s ("EPSI")² COR, pursuant to HAR §§ 6-80-123 and 6-82-12.

I.

Background

A.

Application

On December 18, 2008, Applicant³ filed an application for commission approval of the Proposed Transaction, pursuant to HRS §§ 269-7(a) and 269-19, as applicable ("Application").⁴ Applicant seeks approval to consummate a transaction whereby Applicant will become a direct wholly-owned subsidiary of CenturyTel.⁵ Applicant states that the transaction contemplates a parent-level transfer of control accomplished through a

²EPSI is a wholly-owned subsidiary of Applicant and was formally known as Sprint Payphone Services, Inc. ("Sprint Payphone"). By Decision and Order No. 16108, filed on December 4, 1997, in Docket No. 97-0388, Sprint Payphone was granted a Certificate of Registration ("COR") to provide intrastate pay telephone service within the State.

³Applicant is a publicly traded Delaware corporation headquartered in Overland Park, Kansas. Applicant has incumbent local exchange operations in eighteen states.

⁴Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

⁵Applicant, CenturyTel, and Cajun Acquisition Company ("CAC") entered into an Agreement and Plan of Merger (the "Merger Agreement") as of October 26, 2008. CenturyTel is a publicly traded holding company with incumbent local exchange operating subsidiaries in twenty-five states. CAC is a direct wholly-owned subsidiary of CenturyTel created to effectuate this Proposed Transaction.

stock-for-stock transaction under which current shareholders of Applicant will "receive 1.37 shares of CenturyTel stock for each share of" Applicant stock.⁶ Under the Merger Agreement, Applicant's operating subsidiaries, including ECI, will remain subsidiaries of Applicant which, in turn, will make CenturyTel their respective ultimate parent. Therefore, indirect control of Applicant's subsidiaries will effectively transfer to CenturyTel.

According to Applicant, the Proposed Transaction is reasonable and in the public interest. Applicant represents that, upon completion of the Proposed Transaction, ECI will continue as a certificated carrier in Hawaii and will continue to have the requisite managerial, technical and financial capability to provide services to its customers. Applicant states that end-user customers will continue to receive service from the same reseller of services at the same rates, terms, and conditions as prior to the transaction. As such, the Proposed Transaction, according to Applicant, will be transparent to and have no impact on customers in Hawaii. Furthermore, the Proposed Transaction "will provide the combined entity with greater financial and operational resources to capitalize on marketplace opportunities, diversify revenues, and expand networks, expertise and financial resources to build long-term value for customers and shareholders."⁷

In addition, pursuant to HAR §§ 6-80-123 and 6-82-12, Applicant requests that the commission approve the withdrawal of

⁶See Application at 2.

⁷Id. at 3-4.

EPSI's COR to operate payphones in the State. According to Applicant, EPSI has not operated payphones in Hawaii for more than five years, and has no plans to operate payphones in the State in the future. Thus, Applicant seeks surrender of EPSI's COR. Applicant states that surrender of EPSI's COR will have no impact on Hawaii customers and will cause no disruption in service.

B.

Consumer Advocate's Statement of Position

On February 12, 2009, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of the Proposed Transaction and surrender of EPSI's COR.

II.

Discussion

A.

Proposed Transaction

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, the commission finds, at this time, that Applicant's Hawaii operating subsidiary, ECI, is a non-dominant carrier in the State.⁸ The commission also finds that the Proposed Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the requirements of HRS §§ 269-7(a) and 269-19 should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.⁹ Similarly, based on the findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Application fails to meet any of these filing requirements.

B.

Surrender of COR

HAR § 6-80-123(c) provides, in relevant part, that for any telecommunications carrier whose entry into the intrastate telecommunications market is preempted by federal law,¹⁰ said

⁸Applicant is also surrendering the operating authority of its Hawaii payphone subsidiary, EPSI.

⁹The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) or 269-19 should be waived. Thus, our waiver in this instance should not be construed by any public utility, including Applicant, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

¹⁰See also HAR §§ 6-80-2(b)(2), 6-80-17(d), and 6-80-18(b).

carrier "shall, not later than thirty days before the proposed effective date of any contemplated abandonment or discontinuance of service, provide a written notice of [its] intent to abandon or discontinue service to the commission, the consumer advocate, and affected customers."

Applicant represents that EPSI has not operated payphones in Hawaii for more than five years, and has no plans to operate payphones in the State in the future. Additionally, in response to the commission's directive,¹¹ EPSI, by letter dated February 27, 2009, and filed on March 2, 2009: (1) submitted its 2008 annual financial report; and (2) submitted payment of its 2009 public utility fee.

Given the above, the commission approves the surrender of EPSI's COR to provide payphone service within the State, consistent the HAR § 6-80-123(c).

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Application filed on December 18, 2008.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

¹¹See Commission's letter dated February 19, 2009.


3. The surrender of EPSI's COR to provide payphone telecommunications services within the State is approved, effective from the date of this Decision and Order.

4. This docket is closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii APR - 2 2009.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2008-0317.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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